

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

No. 1:14-CR-306 - GBL

PEDRO ANTHONY ROMERO CRUZ,  
JOSE LOPEZ TORRES,  
JAIME ROSALES VILLEGAS,  
ALVIN GAITAN BENITEZ,  
CHRISTIAN LEMUS CERNA,  
OMAR DEJESUS CASTILLO,  
DOUGLAS DURAN CERRITOS,  
**MANUEL ERNESTO PAIZ GUEVARA,**  
JOSE DEL CID,  
JESUS ALEJANDRO CHAVEZ,  
Defendants

**MOTION TO SEVER AND CONTINUE**

Manuel Ernesto Paiz Guevara, by counsel, moves this Court to sever his case and continue it from the current trial date of March 21, 2016. The purpose of these papers is to update the Court on the circumstances of counsel and to move the Court to sever and continue the matter. Importantly, we note at the outset that the government affirmatively indicated at the teleconference hearing earlier this week, that it *does not* take a position on the issue (including the issue regarding any prejudice to the government if a continuance were granted). As we indicate

herein, given the circumstances beyond anyone's control, the current trial date will severely prejudice Mr. Paiz Guevara.

As the Court knows, Learned Counsel for Mr. Paiz Guevara was recently diagnosed with an illness that prevents him from trying the case on the current trial date. Learned Counsel has selected a treatment option and the doctors are highly confident that the illness and related treatment/recovery *will* allow him to participate in trial in four months (or more) from the date of this pleading (January 29, 2016). Both Mr. Paiz Guevara and Learned Counsel wish for Mr. Baugh to remain on the case, and the trusting attorney-client relationship that has developed between the two of them in particular is important to the case and cannot be developed overnight.

At the teleconference hearing this week, the Court instructed Mr. Chick to inquire about other possible Learned Counsel to replace Mr. Baugh in the case for the current March 21, 2016 trial, and to update the Court by today's date. Mr. Chick has consulted with a number of attorneys who qualify as Learned Counsel. That list includes, among others, attorneys that Mr. Chick has worked extensively with in the past such as Peter Greenspun, Jonathan Shapiro, and Christopher Leibig. Every attorney Mr. Chick has consulted has indicated that the only way they can accept such an appointment is if the case were continued, and that in their professional opinions it would be ethically and constitutionally ineffective

assistance of counsel to accept such a case with the current trial date. Most of the attorneys have scheduling conflicts with the current date as well.

Mr. Chick, who has never sat first or second chair in any federal jury trial, echoes the ethical concerns the consulted attorneys have voiced about going to trial with new counsel in such a short time frame, regardless of new counsel's qualifications or experience level. In short, going to trial in less than two months on such a complex case with new counsel (a case with among other things, over a dozen defendants, multiple government cooperators, and thousands of phone calls, recordings, texts and others papers) will ensure that Mr. Paiz Guevara will receive ineffective assistance of counsel. Indeed, Learned Counsel is not much good or use if she or he is not fully informed and prepared.

Mr. Chick also consulted with the Federal Public Defender's Office for assistance on the issue of new counsel, since 18 U.S.C. § 3005 mandates that "the court shall consider the recommendation of the Federal Public Defender organization" for appointments such as this. After noting its previous involvement in the staffing process for appointment of counsel in this case and the difficulties that existed during that process, the FPD began its own search and has hitherto been unable to find qualified, conflict-free counsel that can be ready to effectively represent Mr. Paiz Guevara at trial with such a short window to trial (some of whom also indicated that they have scheduling conflicts).

As we previously informed the Court, by order of the Fourth Circuit, in its order of October 1, 2002, entitled Plan for Providing Representation for Eligible Persons Under the Criminal Justice Act of 1964, as amended, specifically Section F, paragraph 3, defendants in capital cases, including cases that are not certified by the Attorney-General as capital but as to which the death penalty is a penalty permitted by a statute of which is charged in an indictment, appointment of counsel is governed by 18 U.S.C. § 3305 and by 21 U.S.C. § 848 (Q)(4)-(10). Section 18 U.S.C. 3005 requires the appointment of two counsel, “at least 1 shall be learned in the law applicable to capital cases.”

The current circumstances have occurred beyond Mr. Paiz Guevara’s control; yet, he is the one who will pay the price of a trial with ineffective assistance of counsel if the case is forced to proceed with Mr. Chick and any new counsel, who simply just cannot be ready in time to provide effective assistance to Mr. Paiz Guevara in the current time window (counsel who has also not yet been found). Given these circumstances, we request that this case be severed and continued, and that Mr. Baugh remain on the case as Learned Counsel. In the event the Court is not inclined to continue the matter, we respectfully request an evidentiary hearing, so that we can call witnesses and present testimony concerning these issues.

**WHEREFORE**, Mr. Paiz Guevara, by counsel, respectfully asks this Court to sever his case and continue the matter out at least four months from now.

Respectfully submitted,

**MANUEL ERNESTO PAIZ GUEVARA**

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#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was duly served via ECF, upon:

Stephen M. Campbell, Esq.  
Julia K Martinez, Esq.  
Tobias Tobler, Esq.  
Assistant United States Attorneys  
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And all other defendants in this matter by the Court's electronic filing system.

\_\_\_\_\_/s/\_\_\_\_\_  
W. Michael Chick, Jr.